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the federal government it is doubtful whether any branch of economic life can permanently remain within the control of the states. The doctrine of *Osborn* v. *Bank* must, then, be applied with caution. Congress should be permitted to authorize federal agencies to engage in incidental private activities only when clearly essential, and not when merely appropriate, to the continued performance of their governmental functions. See *Osborn* v. *Bank*, *supra*, 861.

CONSTITUTIONAL LAW — THE RIGHT TO VOTE — STATUTE UNCONSTITUTIONAL IN PART — WHO MAY SET UP UNCONSTITUTIONALITY. — A statute provided that "all ballots shall be void which do not contain first-choice votes for as many candidates as there are offices to be filled" (1914, NEW JERSEY LAWS, 174). In accordance with this enough ballots were rejected to cause the defeat of the relator and the election of the respondent. The relator brought an information in the nature of *quo warranto*, contending that this provision was a violation of the constitutional guarantee of the right to vote. *Held*, that the court will not decide the question of constitutionality, for if the contested clause is unconstitutional the whole statute must fail and the election will be void, so the relator can have no title to the office in any event. *Daly* v. *Garven*, 101 Atl. 272 (N. J.).

The clause in question would seem to be a mere regulation of the manner in which the right to vote is to be exercised, and therefore constitutional. *Farrell* v. *Hicken*, 125 Minn. 407, 147 N. W. 815. *Cf. Adams* v. *Landsdon*, 18 Idaho 483, 110 Pac. 280. Wherever possible a court will avoid passing on the question of constitutionality. *Sayles* v. *Walla Walla County*, 30 Wash. 194, 70 Pac. 256. But assuming that the clause is unconstitutional, the question arises whether the remainder of the statute is separable or must fall with it. The proper test is whether the statute with the unconstitutional part exscinded conforms to the legislature's intent in passing it and may be maintained without that part. *Spraigue* v. *Thompson*, 118 U. S. 90; *Reed* v. *Omnibus R. R. Co.*, 33 Cal. 212. See 20 HARV. L. REV. 495. When part of an act fails, no presumption exists in favor of the remainder. *South, etc. Alabama R. Co.* v. *Morris*, 65 Ala. 193. See COOLEY, CONSTITUTIONAL LIMITATIONS, 248 *n.* But nevertheless the decision on this point seems too strict. *Cf. O'Brien* v. *Krenz*, 36 Minn. 136. If the whole statute falls, however, the election is void and the relator has no title. He cannot therefore attack the title of the respondent. *Manahan* v. *Watts*, 64 N. J. L. 465, 45 Atl. 813. But even if the provision is separable the decision of the case is probably right, as the presence on the official ballot of a statement that ballots not complying with an unconstitutional regulation would be thrown out might well be held sufficient cause for avoiding the election, since it would be impossible to determine what the result would have been but for that statement. *Cf. Jones* v. *Glidewell*, 53 Ark. 161.

HUSBAND AND WIFE — COMMUNITY PROPERTY — LIABILITY OF COMMUNITY PERSONALTY FOR THE TORT OF THE HUSBAND. — The plaintiff sought to subject the community personal property to execution in order to satisfy a judgment for the husband's tort, not committed in the management of the community property. *Held*, that the community personal property is not liable. *Schramm* v. *Steele*, 166 Pac. 634 (Wash.).

The general principle underlying the system of community property, which is recognized in eight American states, is that all acquisitions of a husband and his wife during marriage belong beneficially to both. See BALLINGER, COMMUNITY PROPERTY, chap. 1; 24 HARV. L. REV. 652. In general the community property is liable for the separate debts of the husband, as its management and disposition are vested solely in him. *Davis* v. *Compton*, 13 La. Ann. 396; *Schuyler* v. *Broughton*, 70 Cal. 282, 11 Pac. 719; *Lee* v. *Henderson*, 75 Tex. 190,

12 S. W. 981. But in Washington, where a statute requires joinder by the wife in alienating or encumbering the realty, community real estate is not chargeable with the independent obligations of the husband. 1915 REM. CODE (Wash.), § 5918; *Brotton* v. *Langert*, 1 Wash. 73, 23 Pac. 688. Later decisions have reached the same result on the more logical ground that community realty is not liable for acts committed by the husband without the scope of his authority as agent of the community. *Day* v. *Henry*, 81 Wash. 61, 142 Pac. 439; *Wilson* v. *Stone*, 90 Wash. 365, 156 Pac. 12. Prior to the principal case, however, like reasoning was not applied to exempt the community personalty from liability. *Powell* v. *Pugh*, 13 Wash. 577, 43 Pac. 879. But the principal case puts all common property, real and personal, on the same basis, and rests the liablility of the community upon the rule *respondent superior*. Without changing the theory of the system this decision further recognizes the individuality of the married woman, and guarantees her interest more than a theoretical existence.

ILLEGAL CONTRACTS — EFFECT OF ILLEGALITY — AGREEMENT FOR RE-EXCHANGE OF NEGOTIABLE PAPER TO EVADE STATUTORY PROHIBITION. — The plaintiff bank, in order to evade the banking laws, contracted with the defendant bank to exchange a customer's note for a note of the same amount held by the defendant. The notes were to be reëxchanged on demand. The note delivered by the defendant was worthless. *Held*, that the plaintiff bank was entitled to the return of the note or its proceeds. *England* v. *Commercial Bank of New Madrid, Mo.*, 242 Fed. 813.

The general rule is that the law leaves parties to an illegal transaction where it finds them. *Holman* v. *Johnson*, 1 Cowp. 341; *Stewart* v. *Thayer*, 170 Mass. 560, 49 N. E. 1020. Equity, likewise, refuses to raise a resulting trust in favor of the settlor where an express trust for an illegal purpose has failed. *In re Great Berlin Steamboat Co.*, 26 Ch. D. 616. But *cf. Taylor* v. *Bowers*, 1 Q. B. D. 291. This rule has been severely criticized. See WOODWARD, QUASI CONTRACTS, § 135. Important exceptions have been recognized. Where the offense is not *malum in se* the plaintiff has sometimes prevailed. *Davies* v. *London, etc. Ins. Co.*, L. R. 8 Ch. D. 469. See KEENER, QUASI CONTRACTS, 258. Where the defendant's conduct is tainted with fraud the courts have been ready to find that the parties are not *in pari delicto*. *Brown* v. *McIntosh*, 39 N. J. L. 22; *Thomas* v. *Richmond*, 12 Wall. (U. S.) 349. See PERRY, TRUSTS AND TRUSTEES, 6 ed., § 214; POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 403. See also 26 HARV. L. REV. 738. It is solely for public authority to assert the illegality of contracts contrary to public policy. See *Union Nat. Bank* v. *Matthews*, 98 U. S. 621, 629. A defendant, sued by a national bank for money lent, cannot maintain the defense that the bank exceeded the amount permitted by law. *Union Gold Mining Co.* v. *Rocky Mt. Nat. Bank*, 96 U. S. 640; *Bank of Middlebury* v. *Bingham*, 33 Vt. 621. Where illegal contracts have been held void, a quasi-contractual obligation to make restitution has been enforced. *Central Transp. Co.* v. *Pullman's, etc. Co.*, 139 U. S. 24; *Pullman's, etc. Co.* v. *Central Transp. Co.*, 171 U. S. 138. But see E. H. Warren, "Executed *Ultra Vires* Transactions," 23 HARV. L. REV. 495. See also 23 HARV. L. REV. 627. Since the statute in the principal case was intended to protect the bank's depositors, the court's decision seems desirable.

MANDAMUS — PROCEEDINGS — TRAVERSE OF RETURN TO ALTERNATIVE WRIT. — An alternative writ of mandamus issued to compel a corporation to permit inspection of its books by a stockholder. In its return the corporation alleged that the inspection was desired for an improper purpose. *Held*, that the return must be accepted as true and the peremptory writ denied. *State ex rel. Linihan* v. *United Brokerage Co.*, 101 Atl. 433 (Del.).